FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &
IN THE COUNTY COURT AT CLERKENWELL AND SHOREDITCH, sitting at 10 Alfred Place, London WC1E 7LR

Tribunal reference	**:**	**LON/00AG/LSC/2019/0097**
Court claim number	**:**	**E02YY692**
Property	**:**	**Flat B, 24 Belsize Grove, London, NW3 4TR**
Applicant/Claimant	**:**	**24 Belsize Grove Freehold Ltd**
Representative	**:**	**Mr Jonathan Wragg (Counsel)**
Respondent/Defendant	**:**	**Stephanie Lipman, Claudia Israel and Simon Israel**
Representative	**:**	**Ms Claudia Israel**
Tribunal members	**:**	**Judge Robert Latham** **Mr Michael Mathews FRICS**
In the county court	**:**	**Judge Robert Latham (sitting as a District Judge of the County Court)**
Date of hearing	**:**	**12 June 2019**
Date of handed down decision	**:**	**20 June 2019**

DECISION

This decision will be formally made on and will take effect from 26 June 2019 ("the Hand Down Date"). There is no need for any party to attend at the tribunal offices on that day. Rights of Appeal are set out in the Appendix.

Summary of the decisions made by the First-tier Tribunal

(i) The claim for service charges and administration charges is dismissed.

(ii) An order is made under Section 20C of the Landlord and Tenant Act 1985 so that the landlord may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

(iii) An order is made under Paragraph 5A of Schedule 11 of the Commonhold and leasehold Reform Act 2002 so that the landlord may not pass on any of its costs incurred in connection with the proceedings before the tribunal through an administration charge.

Summary of the decisions made by the County Court

(iv) There be no order for costs under either the lease or the Civil Procedure Rules.

The Application

1. On 23 October 2018, the Applicant issued proceedings in the Money Claims Centre claiming the following in respect of Flat B ("the flat"), 24 Belsize Grove, London, NW3 4TR ("the property"):

   (i) £703.67 in respect of "redecoration charge". The pleading referred to Clause 2(2) of the lease whereby the landlord was entitled to recover the cost of decorating the property.

   (ii) £250 in respect of administration fees charged in respect of the failure to pay the "redecoration charge";

   (iii) £840 in respect of contractual cost, namely the legal costs of recovering the said charges up to the date of issue of proceedings;

   (iv) contractual costs in respect of the costs incurred after the issue of proceedings.

2. On 15 November 2018, the Respondents filed a Defence which stated: "we dispute all of the items listed as all service charges are paid to date and no information or proof of the decoration charges have been provided nor any agreement or administration fee nor claimant costs included". Ms Lipman sent an e-mail with the Defence which stated: "we have no information on how £703.67 for December charges has been calculated, please provide a complete breakdown because we are disputing it and have never been advised of the charge before".

3. On 5 February 2019, the case was transferred to the Barnet County Court. On 11 February 2019, the case was transferred on to the

Clerkenwell and Shoreditch County Court. On 1 March 2019, District Judge Bull transferred the case to this Tribunal.

4. As the Court transferred the whole case to the Tribunal, under the Deployment of Judges Pilot, the judge who eventually heard the case would deal with *all* the issues listed above, including contractual costs, at the same time as deciding the payability of the service and administration charges. The judge is empowered to do so as a result of amendments made to the County Courts Act 1984, by which judges of the First-tier Tribunal are now also judges of the county court. This means that the judge sits as a judge of the county court and can decide issues that would otherwise have to be separately decided in the county court. The Pilot is intended to lead to savings in time, costs and resources.

5. On 14 March, the Tribunal gave Directions. The Tribunal had considered that this modest case could be fairly determined on the papers. On 21 March 2019, the Applicant requested an oral hearing.

6. On 4 April, the Applicant sent its Statement of Case to the Respondents. Although not strictly required to do so, it also sent a copy to the Tribunal. The Respondent stated how the redecoration charges were payable under the terms of the lease. The Respondent exhibited 68 pages of documents. The Directions required the Applicant to provide full details of the redecoration works and the reason for them. The Statement of Case stated: "The Applicant's redecoration charge is for Plumbers invoices (sic) that were carried out to the property". There is a reference to an e-mail dated 13 November 2018 (at p.111). however, this makes no reference to any redecoration works.

7. By 25 April, the Respondents should have sent their Statement of Case to the Respondent. They failed to do so. The case was initially set down for hearing on 5 June. On 9 April, Ms Israel requested an adjournment and the case was adjourned to 12 June.

8. On 14 May, the Applicant filed a Bundle of Documents for the hearing which extends to 127 pages. The Applicant noted that the Respondents had not provided any bundle with their Statement of Case. On 17 May, the Tribunal reminded the Respondents that they had failed to provide any Statement of Case. This was not provided.

The Hearing

9. Mr Jonathan Wragg, Counsel, instructed by PDC Law, appeared on behalf of the Applicant. He was at a distinct disadvantage in that he was not accompanied by anyone from either his instructing solicitor, his client, or Red Rock Property Management ("Red Rock") who are the managing agents. He made the surprising submission that the Tribunal

had no jurisdiction to hear the application as it did not relate to service charges. He invited the Tribunal to refer the matter back to the County Court. He stated that he was unaware that the case had been transferred under the Deployment Scheme and that this had not been apparent from the Directions.

10. The Respondents were represented by Ms Claudia Israel. She lives in the flat. She was accompanied by Ms Stephanie Lipman, her mother, who lives at 79 Kingsley Way. They were also accompanied by Mr Amar who is Ms Israel's fiancé.

11. The Tribunal asked the Respondents why they had failed to serve any Statement of Case. Ms Israel stated that they had e-mailed a number of documents to the Tribunal on Friday, 7 June. The Tribunal has no record on receiving such an e-mail. Mr Wragge stated that the Respondent had e-mailed a number of documents to the Applicant on 7 June. He had no objection to the Tribunal seeing these documents. However, he stated that he was in no position to deal with any factual dispute as he had no witnesses. Indeed, he was not instructed as to the Applicant's response to the factual averments raised in these documents.

12. The Tribunal asked the Respondents to explain their failure to comply with the Directions which are made to enable lay parties to prepare and present their cases so that they can be fairly determined in a proportionate manner. The Respondents' initial explanation was that they had not received any of the relevant documents from either the Tribunal or the Applicant. The Applicant had given their address as 79 Kingsley Way, the address at which Ms Lipman resides. We were told that this was the correspondence address provided by the Respondents. The Applicant had also copied letters to the flat. When confronted with the suggestion that it was most improbable that the Respondents had not received any of the correspondence, the Respondents suggested that they might have received correspondence from the Tribunal, but not from the Applicant. This position became equally untenable when it became apparent that a copy of the Applicant's State of Case, receipt of which they had denied, was in their possession. We are satisfied that the Respondent's approach to this case has been chaotic to an extreme. Had we needed to determine any factual issues, we would not have been minded to give the Respondents permission to adduce any evidence, given the prejudice that this would have caused to the Applicant.

The Law

13. Section 18 of the Landlord and Tenant Act 1985, defines a "service charge":

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

14. Paragraph 1 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 defines an "administration charge:

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

15. As part of the statutory armoury to protect residential tenants from being required to pay unreasonable service charges and administration charges, any demand must be accompanied by the relevant Summary of Rights and Obligations.

The Background

16. The Respondents are the lessees of the flat which is at the rear on the lower ground floor. Their lease is dated 30 July 1984 (at p.12). The Respondents acquired their interest on 6 August 2014, paying a premium of £1,595,000. Ms Israel occupies the flat.

17. On 29 March 2017, Red Rock demanded payment of £892.80 (p.108). The demand was accompanied by the Summary of Rights and Obligations in respect of a service charge. The invoice referred to two invoices from Plumbers.org, dated 29 March 2017, Invoice No. 150609 in the sum of £288.00 and 15627 in the sum of £604.80:

(i) Invoice 15609 (at p.119) refers to an out of hours visit on 22 March 2017 because there was no heating or hot water for Flats A, G, and H. It was apparent that someone had turned off the boiler. It states that the work was completed on 21 March 2017 (sic).

(ii) Invoice 15627 (at p.116) refers to a suspected gas leak. Another company had shut the boiler off. It states that the operatives attend on 24 November 2017 (sic) and that the work was completed on 24 March 2017.

18. On 4 April 2018, Property Debt Collection Limited sent a pre-action protocol letter to the Respondents. This was sent both to the flat (at p.125) and 79 Kingsley Way (p.122). A total of £3,356.70 was claimed which included: (i) service charges of £2,213.90; (ii) the two items of "redecoration charge" in the sums of £288.00 and £604.80, and (iii) administration charges of £250 for late payment of the redecoration charges.

19. On 23 October 2018, the Applicant issued Particulars of Claim in the Money Claims Centre. A Statement of Account (at p.95) suggests that £4,250.87 was owing on this date. However, the claim was restricted to (i) £703.67 in respect of "redecoration charge"; (ii) the administration charge of £250; and (iii) costs claimed pursuant to the contract and the CPR. The Tribunal was told that the clam for the "redecoration charge" had reduced from £892.80 to £703.67 because the Applicant had applied a sum of £189.10 paid in respect of service charges against this debt.

20. The substance of the dispute between the parties over the two invoices is set out in an e-mail dated 13 November 2018 (at p.111):

(i) Ms Israel had stated: "I am not responsible for these costs. This was the carbon monoxide that was leaking from the communal boiler in the building. As confirmed by National Grid. I provided the CORGI certificate from the emergency's plumber that needed to be called. As you will recall this happened several times that month and the authorities cut off on these occasions the gas supply as it was deemed unsafe".

(ii) Adrian Calver, on behalf of Red Rock, responded: "AC the contractor you had attend the property to turn off the boiler was not a gas engineer, there was no evidence following your contractor turning off the gas that there was an issue. You were asked to provide evidence that your contractor was an approved gas safe contractor but the evidence you provided did not confirm this. This point was made to you at the start of the last meeting. Each time you tamper with the boiler there is a cost to send contractor to the development to check the boiler and turn it back on".

Our Determination

21. Under the Deployment Scheme:

(i) The Tribunal administers the whole case on behalf of the County Court, and Judge Latham, sitting as a District Judge of the County Court ("DJ Latham"), is entitled to make directions having regard to the provisions of the Civil Procedure Rules 1998 (the "CPR").

(ii) Judge Latham and Mr Michael Mathews, sitting as a First-tier Tribunal ("FTT"), determine any issue relating to service charges and administration charges. This jurisdiction is governed by the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules").

(iii) DJ Latham determines the issues relating to costs, whether claimed as contractual costs or under the CPR, which fall outside the traditional jurisdiction of the FTT.

DJ Latham and the FTT have had regard to the decision of the Upper Tribunal ("UT") in *Avon Ground Rents Limited v Childs ("Avon Ground Rents")* [2018] UKUT 204 (LC), and identify the decisions taken respectively by DJ Latham and the FTT.

Issue 1: The Jurisdiction of the Tribunal – DJ Latham

22. Mr Wragg's primary submission was that the FTT had no jurisdiction to determine the claim and that it should be referred back to the County Court. DJ Latham rejected this submission:

(i) This case was transferred to the tribunal under the Deployment Scheme. The tribunal therefore had jurisdiction regardless of whether or not the claim fell within the traditional jurisdiction of the FTT.

(ii) Had DJ Latham considered that the Applicant been prejudiced by any lack of clarity in the Directions about this matter being transferred under the Deployment Scheme, this is a matter to which he would have given due weight. However, he is satisfied that no prejudice has arisen.

(iii) Even had the FTT only had jurisdiction to deal with the claim for service and administration charges, this case had been properly referred to the FTT. It was now too late for the Applicant to contend that a sum (i) demanded as a service charge and (ii) claimed as a service charge, was not a service charge.

Issue 2: Determination of the Claim for service charges and administration charges – The FTT

23. Mr Wragg realistically accepted that he could not establish the pleaded claim that a service charge of £703.67 was payable in respect of a "redecoration charge". He conceded that the pleaded claim was

misconceived. There has been no redecoration or any other service for which a law demand has been made. The FTT notes that the sum demanded was originally £892.80. The Applicant was not entitled to apply any sum paid in respect of service charges against this demand. The sum of £189.10 should therefore be credited back to the service charge account.

24. Given that there was no valid demand for the said service charge, no administration charge could be established for non-payment of the sum demanded as a service charge.

Issue 3: Should an Amendment been Permitted – DJ Latham

25. DJ Latham gave Mr Wragg the opportunity to indicate how the Applicant's claim should have been framed. He was mindful that under its traditional jurisdiction, the FTT had no power to amend a claim referred by a County Court (see *John Lennon v Ground Rents (Regisport) Limited* [2011] UKUT 330 (LC)). The FTT would rather have been required to refer the matter back to the County Court for the proceedings to be amended. Under the Deployment Scheme, DJ Latham now has jurisdiction to permit an amendment where it would be in the interests of justice to do so.

26. DJ Latham granted a short adjournment, after which Mr Wragg indicated that he would frame an amended claim under the following heads: (i) breach of an easement; (ii) negligence; (iii) trespass; (iv) breach of contract; and/or (v) nuisance. He was unable to produce an amended pleading specifying the material facts upon which the Applicant would now seek to rely.

27. DJ Latham was satisfied that, having regard to the overriding objectives in CPR 1, it would not be proportionate to permit any amendment. The sum claimed is modest. The sums expended in litigating a claim which is now conceded to be misconceived, far exceed the sum in dispute. Were an amendment to be permitted, substantial costs would be incurred: (i) The Applicant would need to amend the Particulars of Claim and its Statement of Case; (ii) The Respondents would need to respond to the Amended Claim; (iii) witness statements would be required; and there would be a further hearing. DJ Latham would have required the Applicant to bear the costs thrown away which would have far exceeded the modest sum in dispute.

Issue 4: Costs – DJ Latham

28. Given that the claim has failed, the Applicant has no right to claim contractual costs under the lease. DJ Latham is satisfied that there should be no order for costs under the CPR.

Issue 5: Consequential Orders – the FTT

29. The FTT makes no order for the refund of any tribunal fees paid by the Applicant. Their case has been dismissed. For the avoidance of doubt, the FTT makes the following additional orders:

(i) An order is made under Section 20C of the Landlord and Tenant Act 1985 so that the landlord may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

(ii) An order is made under Paragraph 5A of Schedule 11 of the Commonhold and leasehold Reform Act 2002 so that the landlord may not pass on any of its costs incurred in connection with the proceedings before the tribunal through an administration charge.

Conclusions

30. We have reached the above decisions without regret. Where a landlord demands a sum from its tenant, the basis of the claim must be clearly specified. This is particularly important where, as in this case, non-payment may result in further claims both for administration charges and costs under the lease. In the current case, the sum was demanded as a service charge. The basis upon which it was payable as such was not specified. This initial error was then repeated in (i) the pre-action letter; (ii) the Particulars of Claim in the County Court; and (iii) the Statement of Case in the FTT.

Judge Robert Latham
20 June 2019

Appendix - Rights of Appeal

Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Hand Down Date.

3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application

for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking.

Appealing against the decisions made by the Judge in his capacity as a Judge of the County Court

5. Any such application must arrive at the tribunal offices in writing before the Hand Down Date. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking.

6. If an application is made for permission to appeal and that application is refused, or if no application for permission to appeal is made but, in either case, a party wants to pursue an appeal, that party must file an Appellant's Notice at the County Court office (not the tribunal office) within 28 days of the Hand Down date.

Appealing against the decisions of the tribunal and the decisions of the Judge in capacity as a Judge of the County Court

7. In this case, both the above routes should be followed.